

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
REGIONAL COUNCIL
MAR 30 1997

BEFORE THE ADMINISTRATOR

'99 MAR 30 P2:20

IN THE MATTER OF)	
)	
HENRY VELLEMAN, individually,)	U.S. EPA DOCKET NO. V- 5-CAA-97-008
and d/b/a)	
PROGRESSIVE POLETOWN)	Judge Barbara A. Gunning
PROPERTIES,)	
)	
Respondent.)	
_____)	

CONSENT AGREEMENT AND CONSENT ORDER

Complainant, the United States Environmental Protection Agency ("U.S. EPA"), having filed an Administrative Complaint and Notice of Proposed Order Assessing a Penalty ("Complaint") filed on May 30, 1997, against Respondent Henry Velleman, individually and d/b/a Progressive Poletown Properties ("Respondent"), the Parties herein; and

U.S. EPA and Respondent, having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Consent Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

I. PRELIMINARY STATEMENT

1. U.S. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

2. Pursuant to Section 112 of the Act, 42 U.S.C. § 7412, the Administrator of U.S. EPA listed asbestos as a hazardous air pollutant and prescribed a National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos.

3. The regulations governing the emission, handling and disposal of asbestos are codified at 40 C.F.R. Part 61, Subpart M, §§ 61.140-61.157.

4. Section 113(a)(3)(A) of the Act, 42 U.S.C. § 7413(a)(3)(A), in applicable part, authorizes the Administrator to issue an administrative penalty order in accordance with Section 113(d) of the Act, 42 U.S.C. § 7413(d), for violating any requirement or prohibition of any rule promulgated, issued or approved pursuant to, among other things, Section 112 of the Act, 42 U.S.C. § 7412.

5. The Complaint alleges that Respondent violated the requirements of the asbestos NESHAP during the renovation activity conducted at 9542 Joseph Campau Street, Hamtramck, Michigan, which commenced on or before August 15, 1996.

6. Respondent stipulates that U.S. EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent.

7. Respondent admits the jurisdictional allegations in the Complaint.

8. Respondent neither admits nor denies the factual allegations in the Complaint.

9. Respondent consents to the assessment of the civil penalties provided in the Order below.

10. This Consent Agreement and Consent Order shall apply to and be binding upon Respondent, its officers, directors, successors and assigns, including, but not limited to, subsequent purchasers.

11. Respondent hereby waives its right to a judicial or administrative hearing or appeal on the Complaint.

II. TERMS OF SETTLEMENT

12. Pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413 ("CAA"), the nature of the violations, and other relevant factors, U.S. EPA has determined that an appropriate civil penalty to settle this action is in the amount of NINETY THOUSAND DOLLARS (\$90,000).

13. Respondent consents to the issuance of the Consent Agreement hereinafter recited and consents for the purposes of settlement to the payment of the civil penalty cited in the foregoing paragraph.

14. Respondent shall pay the civil penalty assessed in paragraph 12, above, in two installment payments, plus Interest. The first installment of FORTY-FIVE THOUSAND DOLLARS (\$45,000) shall be made no later than thirty (30) days from the date that U.S. EPA files a fully executed copy of this Consent Agreement and Consent Order with the Regional Hearing Clerk. The second installment payment of FORTY-FIVE THOUSAND DOLLARS (\$45,000), plus an additional sum for Interest on that amount calculated beginning thirty (30) days after the effective date of this Consent Agreement and Consent Order through the date of payment, shall be made no later than twelve months after the filing of this Consent Agreement

and Consent Order with the Regional Hearing Clerk. The second installment shall include Interest calculated in accordance with the requirements of paragraph 17, below.

15. Respondent shall pay each installment of the civil penalty set forth in paragraph 12, above, by certified or cashier's check or money order, payable to "Treasurer, United States of America," and mailed to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

A copy of all payments shall be mailed to the Regional Hearing Clerk (Mail Code R-19), Counsel for the Complainant (Mail Code C-14J) and the Branch Secretary, Air Enforcement and Compliance Assurance Branch (Mail Code AE-17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. A transmittal letter identifying the name and docket number should accompany both the remittance and the copies of each check.

16. The penalty specified in paragraph 12, above, shall represent civil penalties assessed by U.S. EPA and shall not be deductible for purposes of Federal taxes.

17. Pursuant to 31 U.S.C. § 3717, U.S. EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on the balance of the civil penalty thirty days following execution of the Consent Agreement and Consent Order. For purposes of the payment requirement set forth in paragraph 14, above, Interest will be calculated and assessed in accordance with 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt

collection, including processing and handling costs and attorney's fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty change on the debt will accrue from the date the penalty payment becomes due and is not paid.

18. Respondent's failure to comply with the provisions of paragraph 14 may result in the referral of this matter to the U.S. Department of Justice for Collection. In any such collection action, the validity, amount and appropriateness of the Consent Agreement and Consent Order or the penalty assessed is not subject to review.

19. On or before July 12, 2002, Respondent shall provide to U.S. EPA in writing, under oath, all information known to it concerning disposal of alleged regulated asbestos containing material which is the subject of the Complaint in this matter. If such information is disclosed in the resolution of a criminal proceeding prior to July 12, 2002, Respondent shall provide to U.S. EPA in writing, under oath, all information known to it concerning disposal of alleged regulated asbestos containing material which is the subject of the Complaint in this matter at the same time such information is provided in resolution of a criminal proceeding. Respondent shall transmit all information known to it concerning disposal of alleged regulated asbestos containing material which is the subject of the Complaint in this matter to Counsel for the Complainant (Mail Code C-14J) and the Branch Secretary, Air Enforcement and Compliance Assurance Branch (Mail Code AE-17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. U.S. EPA has the right to seek such information by means of an information request pursuant to appropriate statutory authority.

Respondent reserves all rights and defenses it may have with respect to any such information request.

20. This Consent Agreement and Consent Order constitutes a settlement by U.S. EPA of all claims for civil penalties pursuant to Section 113 of the Clean Air Act for the civil violations alleged in the Complaint. Nothing in this Consent Agreement and Consent Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this Consent Agreement and Consent Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by Complainant, and it is the responsibility of Respondent to comply with such laws and regulations.

21. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

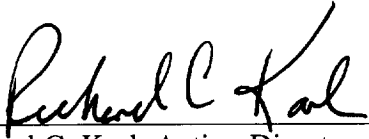
22. This document constitutes an “enforcement response” as that term is used in the Clean Air Act Civil Penalty Policy for the purposes of determining Respondent’s “full compliance history” as addressed in Section 113(e) of the Clean Air Act, 42 U.S.C. § 7413(e).

23. Each party shall bear its own costs and attorney’s fees in connection with the action resolved by this Consent Agreement and Consent Order.

24. The effective date of this Consent Agreement and Consent Order is the date on which it is signed by the Acting Regional Administrator.

In the Matter of Henry Velleman, et al.:

For Complainant:

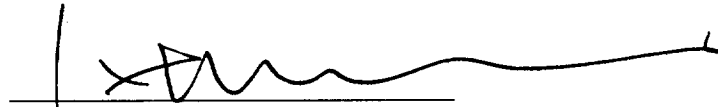
A handwritten signature in black ink, appearing to read "Richard C. Karl". The signature is written in a cursive style with a large, looping "R" and "K".

Richard C. Karl, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5

Date: 3-25-99

In the Matter of Henry Velleman, et al.:

For Respondent:

A handwritten signature in black ink, appearing to be 'H. Velleman', written over a horizontal line.

Henry Velleman
d/b/a Progressive Poletown Properties

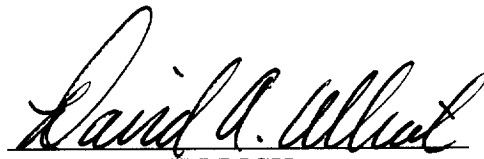
Date: 3, 16. 99

In the Matter of Henry Velleman, et al.:

III. ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, effective immediately.

Date: March 26, 1999

A handwritten signature in black ink, reading "David A. Ullrich". The signature is written in a cursive style with a horizontal line underneath it.

DAVID A. ULLRICH
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 5